

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CALVIN WRIGHT

Petitioner,

vs.

DON TAYLOR, WARDEN,

Respondent.

CASE NO. 06cv2313-BEN (POR)

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

This is a Petition for Writ of Habeas Corpus. Respondent has moved to dismiss the Petition on the grounds of non-exhaustion of state remedies. On July 9, 2007, Magistrate Judge Louisa S. Porter issued a Report and Recommendation recommending that the motion to dismiss be denied. No objections have been filed. For the reasons stated below, the Court adopts the well-reasoned Report and Recommendation of the Magistrate Judge, denies Respondent's Motion to Dismiss and directs Respondent to file an Answer and show cause why the writ should not be granted.

A district judge "may accept, reject, or modify the recommended decision" of a Magistrate Judge on a dispositive matter. F.R.C.P. 72(b); *see also* 28 U.S.C. §636(b)(1). Moreover, "the court shall make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." *Id.* "The statute makes it clear that the district judge must review the magistrate judge's findings and recommendations *de novo if objection is made*, but not otherwise....Neither the Constitution nor the statute requires a district judge to review, *de novo*,

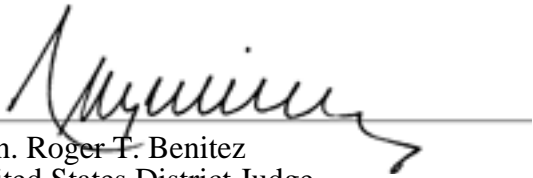
1 findings and recommendations that the parties themselves accept as correct.” *U.S. v. Reyna-Tapia*,
2 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc), *cert denied*, 157 L.Ed.2d 182 (2003)(emphasis in
3 original).

4 In the Report and Recommendation, the Magistrate Judge correctly considered the
5 Petitioner’s efforts to exhaust his state remedies and determined that all of the issues were
6 exhausted. This Court adopts in full the Report and Recommendation.

7 Respondent’s Motion to Dismiss is Denied. Respondent is directed to file an Answer and
8 shoe cause why the writ should not be granted and to do so **no later than October 22, 2007**.

9 IT IS SO ORDERED.

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11 DATED: September 14, 2007

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14 Hon. Roger T. Benitez
United States District Judge